REMARKS OF THE HONORABLE DEAN ACHESON

American Institute of Int. Law -
Panel on Cuban Quarantine 4/25/63

The talk of the legal aspects of the Cuban Incident reminds me of the story of the women discussing the Quiz program.scandals. One said that she felt the scandals prevented serious moral issues. The other answered, "And I always say that moral issues are more important than real issues."

Mr. Chayes has cited legal principles to justify the actions taken by our government in October of 1962, observing in passing that "law was not wholly irrelevant."

Today, in the analyses presented, several legal theories to justify the Cuban quarantine have appeared. Professor Hart has been quoted to the effect that a legal system is all pervasive and that an all-pervasive system will necessarily provide an answer for all problems which arise within it. Others found justification within treaties or agreements; still others within the realm of "generally accepted" ideas. What can one expect to find? Clearly, a simple answer that the action was lawful or unlawful will not be found.

In my estimation, however, the quarantine is not a legal issue or an issue of international law as these terms should be understood. Much of what is called international law is a body of ethical distillation,

and we should take care not to confuse this distillation with law. We should not rationalize general legal policy restricting sovereignty from utilizing international documents composed for specific purposes.

Further, the law through its long history has been respectful of power -- especially that power which is close to the sanctions of law. This point is exemplified by the history of English law during the era of Richard II. The court of the King's Bench was asked to pass on the validity of the Duke of York's claim to the English Crown. The court refused to consider the question since it "concenred the King's own estate and regalie." The court indeed assumed a respectful attitude toward power

There are indications in our country today which suggest that some segments of our sovereign people resist judicial entry into the inner sanctuary of power. In the field of labor-management relations, where law had once entered boldly, it has withdrawn before power. The same court that was willing to apply a yet-to-be-announced doctrine of law to apportionment of legislative representatives has left the issue of featherbedding, where no rules were applicable, to power. Again in the steel-price controversy law has left the arbitrament to other principles.

I must conclude that the propriety of the Cuban quarantine is not a legal issue, and law simply does not deal with such questions of ultimate power -- power that comes close to the sources of sovereignty. The power, position, and prestige of the United States had been challenged by another state: I cannot believe that there are principles of law that say we must accept destruction of our way of life. One would be surprised if practical men, trained in legal history and thought, had devised and brought to a state of general acceptance a principle condemnatory of an action so essential to the continuation of a preeminent power, as that taken by the United States last October. Such a principle would be as harmful to the development of restraining procedures as it would be futile. No law can destroy the state creating the law. The survival of states is not a matter of law.

However, in the action taken in the Cuban quarantine, one can see the influence of accepted legal principles. These principles are procedural devices designed to reduce the severity of a possible clash. [illegible] These devices cause wise delay before drastic action, create a "cooling-off" period, permit the consideration of others' views. The importance of the

Organization of American States was, also, procedural and emphasized the desirability of collective action, thus creating a common denominator of action. Some of these desirable consequences are familiar to us in the domestic industrial area

In October the United States was faced with grave problems of policy and procedure in relation to its own and outside interests. The action taken was the right action. "Right" means more than legally justifiable, or even successful. The United States resolved very grave issues of policy in a way consonant with ethical restraint and leadership which considers the interests of others.

The most perplexing aspect of the decision was the difficulty of comparing, of weighing, competing considerations. How could one weigh the desirability of less drastic action at the outset against the undesirability of losing sight of the missiles, or having them used against us, which might be avoided by more drastic action from the onset, such as destroying the weapons. The President had no scales in which to test these weights, no policy litmus paper. Wisdom for the decision was not to be found in law, but in judgment. Principles, certainly legal principles, do not decide concrete cases.